



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Regulation of Group Living Arrangements for Adults

Wisconsin recognizes and regulates four types of group living arrangements for adults: residential care apartment complexes; adult family homes; community-based residential facilities; and nursing homes. These categories represent a continuum of care from relative independence and autonomy to dependence and supervision of residents, with a corresponding continuum of increasing state oversight.

The Department of Health Services (DHS) regulates these types of facilities to protect the health and safety of residents. A person or entity operating these types of facilities must obtain the appropriate license or certification and follow the relevant DHS regulations.

This Information Memorandum gives an overview of the regulations that pertain to these four types of group living arrangements for adults.

RESIDENTIAL CARE APARTMENT COMPLEXES

A residential care apartment complex (RCAC), commonly known as an assisted living facility, is a place where five or more adults reside in independent apartments. Each resident may receive up to 28 hours per week of supportive, personal, and nursing services from the facility or outside providers. Rules regarding RCACs are set forth in ch. 50, Stats., and ch. DHS 89, Wis. Adm. Code.

FORM OF REGULATION

An RCAC must be either *certified* or *registered* by DHS. While the same requirements apply to both certified and registered RCACs, certified RCACs are subject to more DHS oversight.

Certification is required for an RCAC that receives Medicare or other public funding for residents. To obtain certification, a facility must complete the application, provide the necessary supporting documentation, and pay the certification fee. DHS may conduct on-site visits to the facility to determine if the facility meets the definition of an RCAC and may deny an application if the applicant had a certification that was previously revoked or has a record of violating applicable statutes or regulations. DHS must issue the certification or notice of denial within 70 days of receipt of a complete application.

An RCAC that does not receive Medicare or other public funding must be *registered* with DHS rather than *certified*. To register an RCAC, a person must submit a completed application form to DHS including assurances that the facility meets the definition of an RCAC

and is in compliance with applicable regulations. DHS must issue a statement of registration upon receipt of a complete application.

SPECIFIC REQUIREMENTS

Each individual apartment in an RCAC must be of adequate size and configuration for the resident to carry out the functions necessary for independent living, must contain at least 250 square feet of interior floor space, and have all of the following: an individual, lockable entrance and exit; a kitchen; a bathroom that is not shared or accessible by other units; and distinct living and sleeping areas. All common areas in the RCAC must be accessible to residents with mobility devices.

An RCAC may not admit any of the following persons: a person who has a court determination of incompetence and is subject to guardianship; a person who has an activated power of attorney for health care; or a person who has been found by a physician or psychologist to be incapable of recognizing danger, summoning assistance, or making care decisions, unless a person who has legal responsibility for that individual shares the apartment.

An RCAC must execute certain documents before admitting a resident, including a comprehensive assessment, service agreement, and risk agreement. The comprehensive assessment must be completed by the RCAC, or a person having expertise in areas related to the resident's health and service needs, and must be reviewed annually. The comprehensive assessment must evaluate the resident's physical, mental health, nutritional, and other service needs. The service agreement is a binding agreement between the resident and the facility that identifies: the type and amount of services required by the resident; fees for those services; resident rights; and termination, transfer, and dispute resolution procedures. The risk agreement is a signed, jointly negotiated agreement between the facility and the resident that must identify risks that are known or should be known by the facility and any resident needs that will not be met by the facility.

The RCAC must provide or contract for services that are sufficient to meet the care needs identified in a resident's service agreement. The RCAC must have adequate staff to provide resident services and must ensure that residents are not abused, neglected, or financially exploited by the facility or its staff. All staff must have training in certain safety procedures including fire, first aid, and universal precautions, as well as the individual facility's emergency plan.

An RCAC may not terminate its contract with a resident unless any of the following applies: the resident's service needs may not be met at the facility; the resident requires more than 28 hours of services per week; the resident is adjudicated incompetent, has an activated power of attorney for health care, or has been found incapable of recognizing danger or summoning assistance by certain medical professionals; the resident's behavior poses an immediate threat to anyone's health or safety; the resident refuses to cooperate in medical examinations or in forming risk agreements; the resident's fees are not paid; or any other reason specified in the service agreement. The RCAC must provide the resident and any designated representative 30 days' notice of the termination, absent an emergency.

Each resident of an RCAC has certain rights associated with independent living, such as freedom from abuse, privacy, self-determination, courtesy and respect, access to services and personal property, and other rights generally specified for persons in group living

arrangements. RCACs must have a written grievance procedure including information about how a resident may file a complaint with DHS.

OVERSIGHT

Both registered and certified RCACs must report any changes to DHS that would affect compliance with the regulations. A *registered* RCAC is subject to minimal DHS oversight. DHS may, but is not required, to periodically inspect a registered RCAC to ensure compliance with the regulations. The registered RCAC facility must notify all residents that DHS does not routinely inspect registered facilities and does not enforce contractual obligations under the service or risk agreements.

A *certified* RCAC is subject to more DHS oversight. The certified RCAC must pay an annual certification fee and complete a renewal application every 36 months. DHS must conduct periodic inspections of the facility without notice to ensure compliance with the regulations. If a violation is found, DHS must issue a written notice of violation explaining the grounds of the violation, any sanctions or penalties that will be imposed, and the appeal procedure. After receiving a notice of violation, the certified RCAC has 30 days to submit a written plan of correction to DHS.

ENFORCEMENT

An RCAC's registration terminates when there is a change in ownership or the facility discontinues operation. DHS may revoke a *registered* RCAC's registration if the facility fails to comply with any of the regulations. The notice of revocation must be in writing and provide the RCAC an opportunity to appeal the decision. The RCAC must notify all residents of the notice of revocation.

DHS has more enforcement mechanisms for *certified* RCACs than for *registered* RCACs. If a violation is found at a certified RCAC, DHS may impose certain sanctions, including ordering any of the following: the facility stop its violation of the regulations; the facility comply with a plan of correction developed by the facility or DHS; the facility stop admissions until the violations are corrected; the facility provide or arrange for training for applicable staff in areas specified by DHS; any Medical Assistance reimbursement for new admissions be denied until all violations are corrected; that payment for services be disallowed during the period of noncompliance; the RCAC stop all operations if it does not have a valid certification; or, in the case of violations that require emergency action for public health, safety, or welfare, the facility's certification be suspended.

DHS may also revoke an RCAC's certification if it finds that the facility has failed to comply with one or more applicable regulations. DHS must provide written notice of a revocation explaining the grounds for revocation and notice of opportunity to appeal the decision. Like registered RCACs, certified RCACs must notify all residents of the notice of revocation. DHS may also directly assess forfeitures on a certified RCAC of \$10 to \$1,000 per violation per day for violations that are harmful to the health, safety, welfare, or rights of residents.

ADULT FAMILY HOMES

An adult family home is a place where three or four adults reside and receive care, treatment, or services above the level of room and board, and only minimal nursing care.

Rules regarding adult family homes are set forth in ch. 50, Stats., and chs. DHS 82 and 88, Wis. Adm. Code.

FORM OF REGULATION

An adult family home must be either *certified* or *licensed* with DHS, or with a county agency that has elected to license or certify adult family homes. A *certified* adult family home is a private residence where three or four developmentally disabled adults, or more if all adults are siblings, reside. No more than two residents in a certified adult family home may routinely receive nursing care over seven hours per week.

Developmental disability is defined as a disability attributable to a brain injury or other neurological condition closely related to mental retardation or requiring treatment similar to that required for individuals with mental retardation, which may be expected to continue indefinitely and constitutes a substantial handicap to the affected individual. Nursing care means services and procedures provided by or that require the direct supervision of a registered nurse.

An applicant seeking to certify an adult family home must submit an application form and other supporting documentation to DHS or the county agency designated to certify adult family homes (certifying agency). The certifying agency must then review the application documents, interview the applicant, and conduct an on-site visit of the home. The certifying agency has 60 days from receiving a complete application to issue a certificate of approval or a notice of denial to the applicant.

A *licensed* adult family home is not limited to developmentally disabled adults. No resident of a licensed adult family home may receive more than seven hours of nursing care per week.

An applicant seeking to license an adult family home must submit an application with any required supporting documentation, undergo an on-site inspection, and pay a license fee to DHS or a county agency designated to license adult family homes (licensing agency). The licensing agency must approve or deny an application within 70 days of receipt.

SPECIFIC REQUIREMENTS

A *certified* adult family home must be physically located so that residents may easily get to community activities by walking or other forms of convenient transportation. The interior and exterior areas of the home must be physically accessible to all residents. The certified adult family home must also meet occupancy and home environment regulations, including having safe and clean facilities that are clear of hazards, functioning hot and cold water, adequate support services, and distinct living and sleeping areas.

A *licensed* adult family home has more comprehensive home environment standards than an RCAC or a certified adult family home. These standards are related to entrances and exits, heating, furnishings, support services (such as laundry), fire safety, and household pets.

Like an RCAC, certain documents and agreements are required for residents of adult family homes. No resident may be placed in a *certified* adult family home without written consent signed by the resident. Both certified and licensed adult family homes must execute a service agreement, service plan, and health assessment for each resident. The health assessment must include a health examination to identify any health problems and screen for communicable diseases. The service agreement must identify the resident's needs, required

services, service providers, amount and source of payment, and a description of the facility's policies and procedures. The service plan must contain a description of the services that the adult family home and outside agencies will provide, identify the level of supervision required by the resident, and identify who will monitor the plan. The service plan must be reviewed every six months and updated as needed.

The regulations for resident services are similar for both certified and licensed adult family homes. The regulations aim to provide a safe, emotionally stable, homelike, and humane environment that encourages a resident's autonomy. The operator of an adult family home must plan activities and services in accordance with the resident's service plan to accommodate the individual resident's needs and preferences. The facility must provide opportunities for a resident to participate in a variety of activities, but may not require a resident to do so.

An adult family home may not terminate a resident's placement without providing the resident, and any guardian or service coordinator, 30 days' notice. However, notice is not required for an emergency termination necessary to prevent harm to the health and safety of the resident or other home residents.

Like RCAC residents, all adult family home residents have certain rights, including the right to be free from mental, physical, or sexual abuse, isolation placement, or physical restraints, the right to send and receive mail, and the right to receive a reasonable amount of visitors. The list of rights for *licensed* adult family homes is more comprehensive than those for *certified* adult family homes, and most of those rights afforded to residents of licensed adult family homes do not apply to a resident under the supervision of the Department of Corrections (DOC). Like RCACs, all adult family homes must promulgate grievance procedures for residents to file complaints.

OVERSIGHT

A *certified* adult family home must submit an annual report containing information required by DHS. If a complete annual report is not timely filed, the certifying agency may issue a warning to the operator or, if the operator is over 60 days late submitting the report, decertify the adult family home. The certifying agency may inspect the home without notice during the period of certification to ensure compliance with the regulations.

A licensing agency has more oversight authority for *licensed* adult family homes than for *certified* adult family homes. Every 24 months, a *licensed* adult family home must submit a biennial report to the licensing agency with the required information and license fee and have the Department of Justice conduct a background check of the licensee, any adult staff living in the home, and any service providers. In addition, the licensee must report certain changes relating to the status of the adult family home or the health and safety of the home's residents to the licensing agency within seven days. The adult family home must also report any death or accident of a resident and record the time, date, and circumstance of the incident. A licensee who knows or has reasonable cause to suspect that a resident has been abused or neglected must immediately contact the licensing agency that issued the home's license and conduct an investigation. The licensing agency must report its findings to the residents and any other applicable individuals, such as legal guardians.

ENFORCEMENT

The main enforcement mechanism for *certified* adult family homes is decertification. The certifying agency may revoke a certified adult family home's certification for substantial and intentional violations of the regulations or for failure to meet the requirements set forth in the regulations. There are appeal procedures for a certified adult family home wishing to challenge the certifying agency's decision. A person who has previously been denied certification or whose certification has been revoked may not apply for recertification within two years after the effective date of the notice of revocation unless the person demonstrates to the satisfaction of the certifying agency that the condition that caused the revocation has been corrected.

There is a wider variety of enforcement mechanisms for *licensed* adult family homes than for certified adult family homes. If the licensing agency finds a licensed adult family home is violating the regulations, the licensing agency must issue a notice of violation and may require the licensed home to submit a plan of correction for approval. The licensing agency may also modify an adult family home's license for certain reasons pertaining to whether the facility and its staff are serving the needs of residents.

The licensing agency may impose a variety of sanctions on a *licensed* adult family home that is found to be violating the regulations. Sanctions include requiring the licensee to implement and comply with a plan of correction, prohibiting the licensee from accepting new residents until all violations are corrected, and requiring the licensee to stop violating any of the regulations.

The licensing agency may also impose conditions, suspend, or revoke the license of an adult family home for violations of the applicable regulations. The licensing agency may suspend or place a condition on a license if it finds that a violation of the regulations directly threatens the health, safety, or welfare of a resident. The licensing agency may revoke a license if it determines that the home has intentionally and substantially violated a requirement of the regulations. Any applicant or person whose adult family home license is denied, suspended, or revoked may request an appeal hearing in writing within 10 days of the date of notice.

A person who violates the regulations pertaining to adult family homes may be fined up to \$500 or imprisoned up to one year in the county jail, or both. The licensing agency may also bring an action seeking an injunction against an adult family home that operates without a certification or license in violation of the regulations.

COMMUNITY-BASED RESIDENTIAL FACILITIES

A community-based residential facility (CBRF) is a place where five or more adults reside, who are not related to the operator or administrator, and in which care, treatment, or services above the level of room and board are provided to residents. A CBRF may not provide more than three hours of nursing care per week per resident and may not admit a resident who requires care above the level of basic care that is required by a person who has a long-term illness or disability that has reached a relatively stable plateau. Regulations pertaining to CBRFs are set forth in ch. 50, Stats., and ch. DHS 83, Wis. Adm. Code.

FORM OF REGULATION

A person may not operate a CBRF without a license from DHS. A CBRF license specifies the facility's size and class, which takes into account the physical and mental abilities of facility

residents. A person seeking to license a CBRF must submit an application, all required supporting documentation and fees, and a program statement. The program statement must include certain information about the CBRF such as the facility's employee availability, resident capacity, class, program offerings, goals, service limitations, admission criteria, and served client groups. Once submitted, DHS has 70 days to approve or deny the application.

If the applicant has not previously been licensed to operate a CBRF, DHS must issue a probationary license that is valid for 12 months. However, DHS may reject an applicant who operated a CBRF and whose license was revoked within five years of the application being filed. Prior to the expiration of the probationary license, DHS must inspect the CBRF and issue a regular license if it finds that the applicant is fit and qualified and the facility meets the requirements set forth in the regulations.

SPECIFIC REQUIREMENTS

A CBRF must provide a safe, clean, comfortable, and homelike living environment for residents and meet certain standards of habitability. These habitability requirements address resident furnishings and equipment, laundry and storage, building and site maintenance, and building support systems such as heating, ventilation, water supply, and electrical systems. There are also regulations pertaining to building safety, including fire and emergency evacuation procedures and detection systems. Finally, the regulations impose extensive building design requirements on CBRFs pertaining to occupancy, space per resident, location and number of bathroom facilities, exits and hallways, windows, walls, and interior surfaces.

A CBRF may not admit a person who is destructive to property or self, requires 24-hour supervision by a nurse or care above the level of intermediate nursing care, requires chemical or physical restraint, is incapacitated, or whose ambulatory and cognitive status is incompatible with the CBRF class or program statement. A CBRF also may not admit a person under the age of 18 or a person who requires more than three hours of nursing care per week unless certain conditions are met and the CBRF obtains consent from DHS. A CBRF licensed for 16 or more residents may not admit a person who has been found incompetent without a court-ordered protective placement.

Like an RCAC or adult family home, a CBRF must execute certain documents for each resident. However, the document requirements for CBRFs are more extensive than for RCACs or adult family homes. For every resident, a CBRF must execute a health screening for communicable disease, an admission agreement, an assessment, and a service plan. The admission agreement must include a description of services offered to the resident, and must specify the procedure for changes in services and voluntary termination from the facility. The assessment must include an evaluation of the resident's physical health, medication and pain levels, mental health and behavior patterns, capacity for self-care, and risks.

The service plan required for CBRF residents is more comprehensive than the service plan required for residents of RCACs and adult family homes. The service plan must identify the resident's needs and desired outcomes, program services the CBRF will provide, measurable goals and time limits for attainment, and methods for delivering care. The service plan must be reviewed annually or when there is a change in the resident's needs. In addition, at least annually, the CBRF must provide each resident an opportunity to complete a satisfaction evaluation to monitor the resident's level of satisfaction with the CBRF.

A CBRF must maintain an adequate level of staff to meet the needs of residents on a 24-hour basis and follow applicable regulations regarding resident medications. Staff must teach residents the necessary skills to achieve and maintain the resident's highest level of functioning and must provide services adequate to meet the needs of residents in certain areas including personal care, supervision, community and leisure activities and transportation, health monitoring, and medication administration.

A CBRF may not involuntarily discharge a resident unless the resident has not paid the charges, requires care beyond the scope of the CBRF license, or in other limited situations permitted by law. The CBRF must give 30 days' written notice to a resident before involuntary termination and a resident may request DHS review of an involuntary discharge.

All CBRF residents have certain rights, including the right to receive adequate care, to have personal privacy and privacy in communications with others, to manage their own finances, to keep personal possessions, to be free from abuse, to be treated with courtesy and respect, to have personal health records remain confidential, to not be required to perform services for the CBRF, to receive adequate notice before transfer or discharge, and to be fully informed of services and fees. Like RCACs and adult family homes, a CBRF must provide each resident with a written grievance procedure. Most of these rights do not apply to a resident under the supervision of the DOC.

OVERSIGHT

Prior to receiving its initial license, a CBRF must make a good faith effort to establish a community advisory committee, consisting of representatives from the neighborhood where the proposed CBRF will be located, in order to provide a forum for communication with those persons interested in the proposed CBRF.

A CBRF must submit a biennial report to DHS, pay the applicable license fee, and follow all applicable investigation, notification, reporting, and records requirements. The licensee must notify DHS and residents before closing or transfer of ownership. Once issued, a license is valid until suspended or revoked, and may not be transferred unless certain procedural requirements are followed. In addition, DHS must conduct periodic announced and unannounced inspections.

There are a variety of reporting requirements for CBRFs that are more comprehensive than requirements for RCACs or adult family homes. A CBRF must report to DHS any resident deaths within specified time periods. A CBRF must also investigate any reports of abuse or neglect of a resident or misappropriation of resident's property by a caregiver, investigate resident injuries from unknown sources, and notify residents of any changes affecting them.

ENFORCEMENT

The list of available sanctions for CBRFs is more comprehensive than for both RCACs and certified adult family homes and includes requiring an unlicensed CBRF to stop operations, terminating employment for any individual who operated a CBRF without a license, requiring a licensed CBRF to stop violating any of the rules regarding CBRFs, requiring the CBRF to implement and comply with a plan of correction, prohibiting the CBRF from accepting any additional residents until all violations are corrected, or requiring a CBRF to conduct training for one or more staff members.

DHS may revoke a CBRF license if: DHS has imposed a sanction on a CBRF and the CBRF continues to violate the regulations; the CBRF has substantially violated the regulations; conditions in the CBRF directly threaten the health, safety, or welfare of a resident; or the CBRF has repeatedly violated the same provisions of the regulations. Before imposing any of these enforcement mechanisms, DHS must provide the CBRF with written notice of the grounds for sanction, an explanation of the types of sanctions that may be imposed, and the appeal process for the CBRF.

DHS may remove a resident from a licensed facility under certain conditions to protect the health and safety of the resident, including if the facility is operating without a license or with a suspended or revoked license, if the facility is closing, or in an emergency. When deciding whether to remove a resident from a facility, DHS must balance the likelihood of serious harm to the resident that could result from removal against the likelihood of serious harm if the resident remains in the facility. DHS must plan the removal arrangements with input from the resident and have transfer trauma mitigation care plans in place. A facility may challenge a removal decision within 10 days from the removal. If the facility prevails, DHS must reimburse the CBRF for the payments lost from the resident minus expenses saved as a result of the removal.

A person who operates a CBRF or nursing home without a license may be fined up to \$500 for each day of unlicensed operation, imprisoned for up to six months, or both, for the first violation, and fined up to \$5,000, imprisoned up to one year in jail, or both, for subsequent violations. DHS may also directly impose forfeitures between \$10 and \$1,000 for each day of violation, suspend a CBRF's license for 14 days, or revoke a CBRF's license.

In addition, DHS may, upon the advice of the Attorney General, bring an action in court in the name of the state for injunction or other legal process against the licensee, operator, or other applicable representative of a facility to restrain and enjoin repeated violations of the statutes or regulations.

NURSING HOMES

A nursing home is a place where five or more persons who are not related to the operator or administrator reside and receive care or treatment, and who, because of their mental or physical condition, require access to 24-hour nursing services. Certain exceptions to the definition of "nursing home," relating to whether the facility is classified as another type of group living arrangement or religious facility, are provided in the statutes. Rules regarding nursing homes are set forth in ch. 50, Stats., and ch. DHS 132, Wis. Adm. Code. A nursing home whose residents receive Medicaid or Medicare funding is also subject to extensive requirements under federal law related to the operation of the nursing home, and which are enforced by DHS by delegation from the federal government. The majority of nursing homes in Wisconsin are subject to these federal requirements, which are outside the scope of this Memo.

FORM OF REGULATION

A nursing home must be licensed as either a skilled nursing facility or an intermediate care facility. A skilled nursing facility provides services pursuant to a physician's orders that require the skills of professional personnel, such as registered nurses, that are provided directly by or under the supervision of such personnel. An intermediate care facility provides basic care consisting of physical, emotional, social, and other rehabilitative services under periodic

medical supervision. This type of nursing care requires the skill of a registered nurse for observation and recording of reactions and symptoms and for supervision of nursing care.*

DHS may also grant a facility a license to operate as an institution for mental diseases if the institution for mental diseases has at least 16 beds, is a physically identifiable unit within the nursing home, and the conversion of beds to or from the institution for mental diseases does not increase the total number of beds within the nursing home facility. A nursing home may not apply to convert beds to or from an institution of mental disease more than two times per year.

Like a person seeking to license a CBRF, a person seeking to license a nursing home must submit an application to DHS with information about the ownership of the property and personal information about the licensee. An applicant also must include evidence that the future licensee or manager of the facility has the education, training, or experience to operate and manage a health care facility, and evidence that the licensee has sufficient resources to operate the facility for at least six months. DHS must then investigate the applicant to determine if the applicant is fit and qualified to hold a nursing home license and is able to comply with the DHS regulations. After receiving a complete application, DHS must either approve or deny the application within 60 days.

Like a CBRF, if the nursing home is not yet in operation or has not been previously licensed, DHS must issue a probationary license that is valid for 12 months. After 12 months, if the applicant is found to be fit and in substantial compliance with the regulations, DHS will issue a permanent license. Unlike CBRFs, there is no provision authorizing DHS to reject an application for licensure from an applicant whose nursing home license was previously revoked.

SPECIFIC REQUIREMENTS

Like a CBRF, a nursing home must provide a clean and comfortable living environment for residents and meet certain habitability requirements, building safety and life safety requirements, and occupancy and layout requirements. A nursing home facility must have separate wings for male and female residents, except for spouses and domestic partners, who may share a room. The facility must also have a DHS-approved call system that residents can activate from facility bedrooms and common areas.

A nursing home, like a CBRF, cannot admit a resident that requires care or services above what the facility is licensed to provide, a person who is destructive to property, self, others, or is suicidal, or a person under the age of 18, unless certain documentation procedures are met and the facility obtains permission from DHS. In addition, a nursing home may not admit a person who has a developmental disability or a person under 65 who has a mental illness unless certain conditions are met relating to the license of the specific facility or if the facility obtained permission for the resident admission from a specified county department.

Like the other forms of group living arrangements, a nursing home must execute certain documents before admitting a resident into the facility. The document requirements are more

*Most of the residents receiving intermediate nursing care will have long-term illnesses or disabilities which may have reached a relatively stable plateau, while other residents whose conditions have stabilized may need medical and nursing services to maintain stability. [s. DHS 132.13 (10), Wis. Adm. Code.]

comprehensive than the other forms of group living arrangements because of the increased care that nursing home residents require. Each resident of a licensed nursing home must be admitted under the order of a physician. For each resident, a nursing home must execute documents including physician documentation of the resident's current medical conditions, an initial plan of care, and physician certification that the resident has been screened for communicable diseases. For each resident, a nursing home must conduct a medical examination and evaluation, conduct an initial assessment, and develop an initial plan of care for the resident's nursing services. The facility must also conduct a pain assessment for every resident experiencing pain that includes a report of the pain, the effect of the pain on the resident's daily life and functioning, and a written care plan based on the assessment.

Each nursing home resident must receive care based upon individual need. Nursing personnel must provide care designed to maintain a resident's current level of functioning and to improve the resident's ability to carry out the activities of daily living and must encourage the resident to be up and out of bed as much as possible. Nursing home personnel must also assist residents in carrying out rehabilitative measures, monitor each resident's food and fluid intake, and follow applicable guidelines related to prescription medications.

The regulations for nursing homes require nursing home personnel to be more involved in the social interactions of residents than the other forms of group living arrangements. Each licensed nursing home must have an activity and social program designed to meet the needs and interests of each resident. The nursing home facility must employ a social worker to coordinate social services for each resident, make referrals for guardianship proceedings, and provide adjustment assistance and discharge planning. Employees must receive training on the emotional and social problems and needs of the aged and the ill and how to fulfill those needs, and must assist with providing social services to residents. There are less stringent service requirements for residents admitted to nursing homes for short-term care.

The regulations pertaining to nursing homes have additional requirements pertaining to medical staffing than the other types of group living arrangements because of the increased medical care that nursing home residents require. A licensed nursing home must be supervised by a state-licensed administrator, employ a physician to serve as medical director on a part-time or full-time basis, and employ a full-time director of nursing services. A licensed nursing home facility must also comply with applicable staffing requirements, provide adequate staff to meet resident needs, and have at least one nurse on duty at all times. A nursing home must provide each resident with a certain number of service hours per day administered by a registered nurse, licensed practical nurse, or nurse aide. The number of service hours the nursing home must provide is determined by the level of care the resident requires.

A nursing home must have a transfer agreement with at least one area hospital that permits nursing home residents to receive inpatient care or other hospital services. The nursing home must give the resident and immediate family or legal guardian 30 days' notice before transfer or discharge. A nursing home resident may not be involuntarily transferred or involuntarily discharged from the home, with certain exceptions related to resident consent and care or safety needs. A resident may appeal the facility's transfer or discharge decision by notifying DHS within seven days of receiving notice of the decision.

Nursing home residents have the same rights protected by statute as CBRF residents and additional rights, including the right to certain admission information and to not be

housed in a locked unit unless the nursing home obtains the resident's consent or such placement is the least restrictive environment consistent with the resident's needs. The nursing home must provide each resident with a written grievance procedure. Like the rights for a resident in a licensed adult family home or CBRF, these rights do not apply to a nursing home resident under the supervision of the DOC.

Each nursing home must maintain a quality assessment and assurance committee for the purpose of identifying and addressing quality of care issues at the facility. The committee must meet quarterly to identify care issues and identify, develop, and implement appropriate plans of action to correct identified quality deficiencies.

GRANT PROGRAM

DHS administers a grant program specific to nursing homes. Under this program, DHS may distribute funds for innovative projects designed to protect the property, health, safety, and welfare of nursing home residents. DHS maintains a quality assurance and improvement committee to review proposals and award funds to facilities for innovative projects. Members are appointed by the DHS Secretary for 12-month terms and must meet annually; develop review criteria; review grant proposals; prepare an annual report for DHS; and identify areas of need within a facility, region, or the state. The committee's decision to defer or deny a proposal may not be appealed.

OVERSIGHT

A nursing home must submit an annual report to DHS with all required documents and any required fees. DHS must make at least one biennial inspection of the facility and its residents, and generate one biennial report for each licensed nursing home. The biennial inspection report must state all conditions and practices found to be out of compliance within the previous two-year period. DHS also must keep a survey of each nursing home that is licensed as an institution for mental diseases.

A nursing home must report a resident's death to DHS within 24 hours if there is reasonable cause to believe that the death was related to the use of physical restraint or psychotropic medication or if there is reasonable cause to believe that the death was a suicide.

Like CBRFs, nursing homes are required to submit a plan and fee to DHS for approval of any construction or remodeling project.

ENFORCEMENT

The statutes divide nursing home violations into three classes based upon the level of threat to the health, safety, or welfare of a resident:

- Class "A" violations are those that present a substantial probability that death or serious mental or physical harm to a nursing home resident will result.
- Class "B" violations are those that directly threaten the health, safety, or welfare of a nursing home resident.
- Class "C" violations are those that do not directly threaten the health, safety, or welfare of a nursing home resident.

The notice and enforcement requirements vary slightly depending on the level of violation.

Like the enforcement mechanisms for CBRFs, DHS has multiple enforcement options to remedy violations committed by nursing homes. If DHS has determined, on the basis of inspection, that a nursing home is violating the regulations, it must issue a notice of violation or a correction order to the nursing home that specifies the nature of the violation and the statutory provision or rule alleged to have been violated. However, a notice of violation does not need to be issued if the nursing home reported the violation, made every reasonable effort to prevent and correct the violation, and the violation occurred due to circumstances beyond the nursing home's control, or the nursing home already corrected the violation. For a minor violation, the nursing home must submit a plan of correction to DHS specifying a fixed time period to correct the violation. For a more serious violation, DHS may bring an action in circuit court for an injunction or other legal process against the nursing home licensee or other applicable representative.

DHS may issue a conditional license to any nursing home after a Class A or B violation. The conditional license revokes any regular license held by the nursing home. There are certain procedural requirements DHS must follow before issuing a conditional license, including notice and hearing procedures. DHS must periodically inspect a nursing home after issuing a conditional license, and may revoke the conditional license for continued violations, or replace the conditional license with a regular license if it finds that the licensee is in compliance.

DHS may suspend or revoke a nursing home license for the home's substantial failure to comply with the regulations. Before such action is taken, DHS must provide notice to the facility of the violation, cite the specific statute or rule that was violated, and provide the opportunity for an evidentiary hearing. DHS may also suspend admissions to the nursing home if the nursing home received multiple notices of violation for serious violations in the previous four years. If DHS suspends a nursing home license, DHS must publish notice in a newspaper in the area where the nursing home is located.

Just as for CBRFs, DHS has the authority to directly assess forfeitures on a nursing home for noncompliance with the regulations. DHS may impose forfeitures up to \$10,000 for violations of the applicable regulations, depending on the severity of the violation. These forfeiture amounts may be tripled if a nursing home committed a Class A or B violation and received notice of the same violation of the statute or rule within the past three years. A nursing home may contest DHS enforcement action or forfeitures by sending a written request for a hearing within 60 days of receipt of the contested notice.

A person who operates a nursing home without a license may be fined up to \$500 for each day of unlicensed operation, imprisoned for up to six months, or both, for the first violation, and up to \$5,000, imprisoned up to one year in jail, or both, for subsequent violations. In addition, just as for CBRFs, DHS may, upon the advice of the Attorney General, bring an action in court in the name of the state for injunction or other legal process against the licensee, operator, or other applicable representative of a facility to restrain and enjoin repeated violations of the statutes and regulations.

A nursing home that receives Medicaid or Medicare funding is also subject to federal requirements related to the operation of the nursing home. These requirements are enforced by DHS. When DHS finds a violation of federal requirements, it issues a "statement of deficiency." DHS is prohibited from serving a notice of violation to a nursing home for any

Class A or B violation of state requirements if DHS has already cited the nursing home for a violation under federal regulations based on the same facts.

ZONING RESTRICTIONS FOR ADULT FAMILY HOMES AND CBRFS

The statutes impose zoning restrictions that affect the placement of certain group living arrangements including CBRFs, adult family homes, foster homes, and certain care centers and group homes for children and youth. The statutes governing location of community living arrangements in residential areas are set forth for counties in s. 59.69 (15) Stats.; for towns in s. 60.63, Stats.; and for cities in s. 62.23 (7) (i), Stats. The same powers and duties conferred upon cities are granted to villages under s. 61.35, Stats.

The statutes impose distance requirements as well as density requirements. No CBRF or adult family home may be established within 2,500 feet of any other community living arrangement, unless a lesser distance is established by local ordinance. The total capacity of community living arrangements in any city, village, or town may not exceed 25 persons or 1% of its population, whichever is greater. If the number of adult family homes or CBRFs reaches that total, the city, village, or town may prohibit additional facilities. Likewise, if the capacity of CBRFs or adult family homes exceeds this total in an aldermanic district within a city, or ward in a village or town, the municipality may prohibit additional community living arrangements from locating within the district or ward. The facility or its agents may apply to the municipality for an exception to the distance or density requirement.

The statutes also regulate the location of community living arrangements. If a community living arrangement has a capacity of up to eight residents, the facility is entitled to locate in any residential zone without special zoning permission. If the community living arrangement has a capacity between nine and 15 residents, the facility may locate in any residential area except zones exclusively for single-family or two-family residences. However, the facility may apply for special zoning permission to locate in those areas. Facilities with a capacity of 16 or more residents may apply for special zoning permission to locate in areas zoned for residential use. A municipality may grant or deny the request at its discretion. "Special zoning permission" is defined as including special exceptions, special permits, conditional uses, zoning variances, conditional permits, and words of similar intent.

There are also municipal review requirements. The governing body of any municipality in which the home or living arrangement is located must annually review the adult family home or community living arrangement to determine the effect of the home on the health, safety, or welfare of the residents of the municipality. There are procedural requirements for this determination, including notice and hearing procedures. Within 20 days of the required hearing, the municipality's governing body must deliver its determination. If the governing body determines that the licensed facility poses a threat to the health, safety, or welfare of the municipality's residents, it may order the home to cease operations unless special zoning permission is obtained. The adult family home or community living arrangement must cease operation within 90 days of the order. The determination is subject to judicial review.

Two federal laws (the American with Disabilities Act and the Fair Housing Act) relating to discrimination against persons with disabilities have been held by federal courts to require that a municipality make a reasonable accommodation for these types of facilities. These court cases are discussed in Legislative Council Information Memorandum IM-2010-11,

Establishment of Group Homes and Similar Facilities in Residential Neighborhoods;
published on July 21, 2010.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

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